

Message Text

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ACTION EUR-12

INFO OCT-01 IO-10 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00

COME-00 EB-07 EA-06 FRB-03 INR-07 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

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USIA-06 CG-00 DLOS-03 DOTE-00 FMC-01 OFA-01 /119 W
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P R 281729Z APR 75

FM USMISSION OECD PARIS

TO SECSTATE WASH DC PRIORITY 6801

INFO AMCONSUL MONTREAL PRIORITY

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E.O.11652: N/A

TAGS: EFIN, OECD

SUBJECT: SECOND EXCOM MEETING ON UN CODE OF CONDUCT,
APRIL 24

REFS: (A) STATE 93528

(B) STATE 86470

(C) USOECD 10159

(D) USOECD 10133

1. SUMMARY: EXCOM FAILED TO AGREE ON ESTABLISHMENT OF
AD HOC LEGAL GROUP PROPOSED BY U.K. AT ITS MEETING ON
APRIL 24 AND GAVE ONLY LUKEWARM RESPONSE TO U.S. PRO-
POSAL FOR REFERENCE TO UNITED NATIONS. DISCUSSION WILL
CONTINUE IN COUNCIL AT EARLY DATE (SEE PARA 9 BELOW).
ACTION REQUESTED: INSTRUCTIONS ON PROPOSALS PARA 8
BELOW BY OPENING OF BUSINESS MAY 2 TO ALLOW TIME FOR
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COORDINATION WITH LIKE-MINDED COUNTRIES (LMC'S). END

SUMMARY.

2. EXCOM UNABLE TO AGREE ON BRITISH PROPOSAL FOR CREATION OF AD HOC GROUP OF LAWYERS TO CLARIFY NATURE OF OBLIGATIONS ARISING FROM PROPOSED UN CONVENTION ON LINER CONFERENCES. PRIOR TO MEETING EC COMMISSION HAD TRIED TO OBTAIN EC MEMBERS' AGREEMENT TO POSTPONE EXCOM DELIBERATIONS FOR TWO WEEKS WHILE EC SOUGHT COMMON APPROACH TO UN CODE IN BRUSSELS. EC COUNTRIES HAD DECIDED NOT ONLY TO REQUEST SUCH POSTPONEMENT BUT ALSO TO ACCEPT U.K. PROPOSAL FOR AD HOC GROUP PROVIDED IT REPORTED TO EXCOM BY JUNE 15. HOWEVER, DANES BACKED OUT OF AGREEMENT ON FOLLOWING DAY BECAUSE DANISH AMBASSADOR CONVINCED THAT FURTHER DELAY WAS UNDESIRABLE AND THAT ISSUE SHOULD GO PROMPTLY TO COUNCIL FOR CONSIDERATION AT POLITICAL LEVEL. U.K. EFFORTS TO DISSUADE DANES WERE UNSUCCESSFUL, AND DELICATE EC AGREEMENT ON SUPPORT FOR AD HOC GROUP COLLAPSED AT EXCOM MEETING. GERMANS OPENED FLOODGATES BY REJECTING BRITISH PROPOSAL, AND WERE QUICKLY FOLLOWED BY JAPANESE AND OTHERS (AUSTRALIA, CANADA, PORTUGAL, SPAIN, FRANCE) WHO HAD BEEN WAITING ON SIDELINES. HOWEVER, BRITISH PROPOSAL WAS SUPPORTED BY ITALY, NORWAY, FINLAND, SWEDEN, DENMARK AND SWITZERLAND. EXCOM CHAIRMAN, VALERY, WILL FORWARD U.K. PROPOSAL TO COUNCIL FOR FURTHER CONSIDERATION, BUT WITH CLEAR EXPECTATION THAT COUNTRY POSITIONS WILL REMAIN UNCHANGED AND THAT U.K. AD HOC LAWYER'S GROUP WILL BE PRONOUNCED DEAD IN COUNCIL.

3. U.S. AGAIN PROPOSED REFERRAL OF ISSUE TO UN BUT GOT ONLY LUKEWARM SUPPORT FROM SWEDEN, NETHERLANDS AND GREECE, WITH CAVEAT THAT THEIR SUPPORT DID NOT IMPLY OPPOSITION TO U.K. APPROACH. SECRETARIAT REPORTED ON NEGATIVE RESULTS OF CONTACTS WITH UN AND UNCTAD LEGAL OFFICES, AND GAVE ITS OPINION THAT REFERENCE TO UNITED NATIONS WAS IMPRACTICAL. AT THIS POINT, U.S. SUGGESTED THERE MIGHT BE OTHER MEANS OF APPROACHING UN, AND OFFERED TO WORK WITH OECD LEGAL OFFICE TO FIND WAYS FOR INDIVIDUAL COUNTRIES OR GROUPS OF COUNTRIES TO APPROACH APPROPRIATE BODIES OF UN. THERE WAS LITTLE SUPPORT FOR THIS PRO-LIMITED OFFICIAL USE

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POSAL IN VIEW OF GROWING AWARENESS THAT OECD NOT IN POSITION TO CARRY IT OUT.

4. AT PRESENT CONJUNCTURE, THERE ARE TWO BASIC APPROACHES TO NEXT STEPS ON UN CODE ISSUE. ONE VIEW, SUPPORTED BY DANES, IS THAT THERE IS NO VALUE IN DELAYING COUNCIL DELIBERATIONS BY FURTHER TECHNICAL INQUIRIES, AND THAT PROSPECTS FOR HEADING OFF PREMATURE SIGNATURE

BY SOME OECD COUNTRIES (E.G. FRANCE OR AUSTRALIA) ARE
BETTER SERVED BY POLITICAL-LEVEL DISCUSSIONS ABOUT OECD
MEMBERS' COMMITMENT TO LIBERALIZATION UNDER INVISIBLES
CODE. DANES BELIEVE THAT MOST IMPORTANT SWING COUNTRY
IS GERMANY, AND THAT GERMAN FINANCE MINISTER IS NOT YET
FULLY AWARE OF IMPLICATIONS OF UN CONVENTION FOR
GERMANY'S TRADITIONAL LIBERAL TRADE AND PAYMENTS STANCE.
DISCUSSIONS AT OECD COUNCIL LEVEL WOULD FOCUS HIGH-
LEVEL ATTENTION MORE EFFECTIVELY ON QUESTION OF LIBERALI-
ZATION THAN WOULD FURTHER TECHNICAL-LEVEL DISCUSSIONS.

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5. OTHER VIEW, HELD BY BRITISH, IS THAT FURTHER TECHNI-
CAL DISCUSSIONS MAY THROW ADDITIONAL DOUBT ON COMPATI-

BILITY OF OBLIGATIONS TO BE ASSUMED UNDER UN CONVENTION, AND THEREBY MAKE IT MORE DIFFICULT FOR PROSPECTIVE OECD SIGNATORIES TO TAKE STEP OF SIGNING CONVENTION. BRITISH BELIEVE THERE IS LITTLE PRESSURE FOR ANY OECD COUNTRY TO SIGN PROMPTLY, SINCE EC COUNTRIES MUST STILL RESOLVE QUESTION OF COMPATIBILITY WITH TREATY OF ROME, AND OTHER COUNTRIES, LIKE AUSTRALIA OR JAPAN, ARE UNLIKELY TO TAKE LEAD WHEN ONLY SEVEN LDC'S IN GROUP OF 77 HAVE THUS FAR SIGNED CONVENTION. MOREOVER, THERE IS AN ADVANTAGE IN DELAY IF ONLY TO GET PAST DEADLINE FOR SIGNING ON JUNE 30, WHICH IS LARGELY PSYCHOLOGICAL BARRIER SINCE COUNTRIES CAN ADHERE SUBSEQUENTLY WITHOUT LOSING RIGHT LIMITED OFFICIAL USE

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OF RESERVATION TO CONVENTION.

6. MISSION IS OF OPINION THAT BRITISH ARE ON RIGHT (ALTHOUGH FURTHER TECHNICAL-LEVEL DISCUSSIONS MAY NOT BE POSSIBLE), AND THAT THERE IS NO URGENCY IN PUSHING TO QUICK CONCLUSION IN COUNCIL. WE WOULD APPRECIATE LATEST WASHINGTON VIEWS ON DESIRABILITY OF DELAY AS END IN ITSELF.

7. ON QUESTION OF REFERRAL TO UNITED NATIONS, WE BELIEVE IT IS NOW CLEAR - AFTER EXCOM REJECTION OF AD HOC LAWYER'S GROUP - THAT COUNCIL WILL ALSO REJECT IDEA OF SEEKING CLARIFICATION BY UN. WE AGREE WITH PARA 1 REF B THAT "BASIC QUESTION FOR U.S. IS WHETHER ANY PURPOSE WOULD BE SERVED BY HAVING REFERRAL OF STUDY TO A UN BODY ABSENT OECD AGREEMENT TO DO THIS." IT MIGHT BE POSSIBLE FOR A COUNTRY OR GROUP OF COUNTRIES TO PUT FORWARD A REQUEST TO UNCTAD INDEPENDENTLY OF OECD, BUT THIS WOULD NOT REQUIRE ANY DECISION BY OECD COUNCIL. IF WE WANT TO PURSUE THIS COURSE, WE COULD MAKE JOINT STATEMENT WITH LIKE-MINDED COUNTRIES IN COUNCIL TO EFFECT THAT THIS IS OUR INTENT, BUT SUCH ACTION WILL NOT HAVE ANY DETERRENT EFFECT ON OECD SUPPORTERS OF CONVENTION. WHAT IT MIGHT SUCCEED IN DOING IS TO ALERT MEMBERS OF UNCTAD TO POSITIONS OF OECD SUPPORTERS OF CONVENTION (E.G. THEIR VIEW THAT THE CONVENTION IS NON-MANDATORY), AND BRING PRESSURE TO BEAR ON THEM TO CLARIFY THEIR INTERPRETATION OF CONVENTION. TO ACHIEVE THIS OBJECTIVE, IT MIGHT BE PREFERABLE TO RAISE QUESTIONS ABOUT INTERPRETATION OF MANDATORY NATURE OF CONVENTION IN A PLENARY COMMITTEE OF UNCTAD (E.G. SHIPPING COMMITTEE ?) RATHER THAN ADDRESS A LETTER DIRECTLY TO UNCTAD SEC GEN FOR HIS LEGAL ADVISER TO ANSWER (PER REF A, PARA 1). WE BELIEVE IT IS UNLIKELY THAT UNCTAD LEGAL ADVISER WILL AGREE TO GIVE OPINION ON POTENTIALLY CONTENTIOUS ISSUE OF THIS TYPE, ESPECIALLY AS HE HAS ALREADY INDICATED

RELUCTANCE TO DO SO IN HIS REPLY TO OECD LEGAL ADVISER.

8. IN VIEW OF ABOVE, WE BELIEVE BEST SCENARIO FOR OECD COUNCIL WOULD BE FOR US TO COORDINATE BEFOREHAND WITH LMC'S ON JOINT STATEMENT TO BE INCLUDED IN COUNCIL LIMITED OFFICIAL USE

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RECORD OF PROCEEDINGS NOTING INTENTION OF THESE COUNTRIES TO SEEK FURTHER CLARIFICATION FROM UNCTAD ON UNCLEAR PORTIONS OF CONVENTION. THIS STATEMENT WOULD BE READ INTO MINUTES AFTER COUNCIL FORMALLY REJECTS REFERENCE TO UN AS A POSSIBLE OECD-SPONSORED ACTION. AT SAME TIME, OR EVEN IN LIEU OF THE ABOVE, WE MIGHT PRESS FOR OECD LEGAL ADVISER'S OPINION ON QUESTION OF COMPATIBILITY, IN VIEW OF FACT THAT LEGAL ADVISER'S OFFICE DID NOT MAKE JUDGMENT ON THIS ISSUE DURING INVISIBLES COMMITTEE DELIBERATIONS.

9. IN RESPONSE TO AUSTRALIAN PRESSURE FOR EARLY COUNCIL MEETING, SECRETARY-GENERAL HAS AGREED TO PLACE ITEM ON AGENDA FOR APRIL 29. HOWEVER, WE AND BRITISH HAVE ALREADY INFORMED SECGEN'S OFFICE THAT WE INTEND TO REQUEST DELAY UNTIL AT LEAST MAY 5. ACTION REQUESTED: EARLIEST POSSIBLE RESPONSE TO QUESTIONS RAISED IN PARAS 5 TO 8 ABOVE IN TIME FOR MISSION TO COORDINATE WITH LMC'S BEFORE ANTICIPATED MAY 5 MEETING. IN PARTICULAR, WE NEED TO KNOW IF IT IS PRACTICAL TO SUGGEST TO LMC'S THAT ISSUE BE RAISED IN AN UNCTAD PLENARY COMMITTEE AND IF SO, SPECIFICALLY, WHICH ONE, WHEN AND BY WHAT MEANS.
TURNER

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